

**BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA**

* * * * *

**IN THE MATTER OF CHANGE APPLICATION)
NO. 40H-30017203 TO CHANGE WATER)
RIGHT CLAIM NOS. 40H-W- 161611)
THROUGH 40H-W-161622 BY IX RANCH CO.)**

FINAL ORDER

* * * * *

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, and after notice required by Mont. Code Ann. § 85-2-307, a hearing was held on June 7, 2007, in Fort Benton, Montana, to determine whether an Application to Change a Water Right (Application No. 40H-30017203 to change Water Right No. 40H-W-161615-00) in the name of IX Ranch, (hereinafter referred to as "Applicant") should be approved under the criteria set forth in Mont. Code Ann. § 85-2-402.

APPEARANCES

Applicant appeared at the hearing by and through counsel John E. Bloomquist. Steve Roth; Todd Amsbaugh; and Karl Uhlig, PBS&J testified for the Applicant.

Objector Lyle Ophus appeared pro se. Objector Rocky Crossing Ranch Inc. was present at the hearing through Sam Bitz, but was not represented by counsel. Mr. Bitz was previously represented by counsel in this matter who eventually withdrew. Mr. Bitz was informed by letter dated March 26, 2007 that Rocky Crossing Ranch Inc. could not appear on its own behalf through an agent other than an attorney. Prior to the hearing in this matter Mr. Bitz telephoned the Hearing Examiner on June 5, 2007 informing the Hearing Examiner that he had obtained counsel, but that his counsel would be unavailable to attend the scheduled hearing and that his counsel asked Mr. Bitz to call the Hearing Examiner and request a continuance. The Hearing Examiner considered this to be an *ex parte* communication and orally denied the request for continuance at the time of the telephone call. This call was disclosed at the beginning of the hearing on June 7, 2007. Since Rocky Crossing Ranch Inc. appears to be an incorporated entity and was not represented by counsel at the hearing the Hearing Examiner did not allow evidence and testimony from Rocky Crossing Ranch Inc. at the hearing. See e.g., *Commission on Unauthorized Practice v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200. Rocky Crossing Ranch Inc.'s objection as it appears in the Department's hearing file is of record and considered in this matter.

EXHIBITS

Applicant offered and the Hearing Examiner admitted the following exhibits at the hearing:

Applicant's Exhibit A1 is a map entitled "Map A. Claimed Place of Use & Points of Diversion IX Ranch" dated May 2006, an aerial photograph with an outline of a portion of the IX Ranch and marked to show diversion points.

Applicant's Exhibit A2 is a map entitled "Map B. Proposed Place of Use & Points of Diversion IX Ranch" dated May 2006, an aerial photograph with an outline of a portion of the IX Ranch and marked to show the area proposed to be irrigated under pivot, the areas to be retired from irrigation and other markings.

Applicant's Exhibit A3 is a map entitled "2006 IX Ranch" dated May 2007, an aerial photograph with an outline of a portion of the IX Ranch and marked to show the area proposed to be irrigated under pivot, the areas to be retired from irrigation and other markings.

Applicant's Exhibit A6-A through A6-I a series of nine photographs of flood irrigation and irrigation ditches on the IX Ranch.

Applicant's Exhibit A8-A through A8-C three photographs of ditches and/or flood irrigation on the IX Ranch.

Applicant's Exhibit A-9 titled Plat # 13 a copy of an aerial photograph depicting T28N, R13E, Sec. 17 & 20, showing the location of the IX Ranch and accompanying ditches.

Applicant's Exhibit A-10 titled Plat # 13 a copy of an aerial photograph depicting T28N, R13E, Sec. 18 & 19, highlighting a portion of Section 19.

Applicant's Exhibit A-11 a portion of the deposition of Wesley Berlinger taken on March 27, 2007 regarding IX Ranch's use of water from Big Sandy Creek.

Applicant's Exhibit A-16 portions of a copy of Cause No. 14095 from the District Court of the Eighth Judicial District (currently the 12th Judicial District) of the State of Montana, In and For the County of Choteau concerning the ownership of water from Big Sandy Creek.

Objector Ophus offered and the Hearing Examiner admitted the following exhibits at the hearing:

Ophus Exhibit O-1 titled Plat # 13 a copy of an aerial photograph depicting T28N, R13E Sec. 27, 28, 33, & 34 with an area marked as "no historical."

Ophus Exhibit O-2 which appears to be a copy of a portion of the same aerial photograph as **O-1** depicting flow lines indicating the direction of flow from Sections 29 and 30 onto Section 19.

Ophus Exhibit O-3 a copy of a U.S.D.A. Soil Conservation Service "Irrigation Water Management Planning Sheet" for the IX Ranch's Whitcraft Field showing water use for alfalfa.

Ophus Exhibit O-4 an internet generated map a portion of Big Sandy Creek in the vicinity of Sections 16, 17, 20, 21, 28 and 29 in the Rocky Crossing area.

Ophus Exhibit O-5 and O-5A photographs of the creek channel and flooding/icing in the vicinity of the IX Ranch.

The Hearing Examiner, upon request of the Applicant at hearing, takes notice of Departmental decisions *Grether No. 76H-34573* and *Starkel and Koester No. 76L-008323*. (Hearing Record)

FINDINGS OF FACT

General

1. Application to Change Water Right No. 30017203 in the name of IX Ranch, Stephen A. Roth, President, was filed with the Department on October 31, 2005. (Department File)
2. The application proposed to change the place of use for Water Right Claim No. 40H-W-161615-00 to accommodate the development of a pivot irrigation system. By letter dated May 17, 2006 the Applicant requested that the change include Water Right Claim No. 40H-W-161611-00 through Water Right Claim No. 40H-W-161622, which are all supplemental to each other. Water Right Claim Nos. 40H-W-161611 through 40H-161617 each have a priority date of May 24, 1888, totaling 32 cubic feet per second (cfs), each one to irrigate 3,086 acres. Water Right Claim Nos. 40H-W-161618 through 40H-W-161620 each have a priority date of December 19, 1888, totaling 40 cfs, each one to irrigate 3,086 acres. Water Right Claim No. 40H-W-161621 has a priority date of December 31, 1891, totaling 3.25 cfs to irrigate 3,086 acres. Water Right Claim No. 40-H-W-161622 has a priority date of September 16, 1887, totaling 35.90 gallons per minute (0.079 cfs) to irrigate 3,086 acres. Each of the Water Right Claims listed above, totaling 75.33 cfs, utilize the same points of diversion, irrigate the same places of use and have a period of diversion from March 1 to September 30.

The Applicant proposes to change the place of use listed on each of these Water Right Claims by retiring previously irrigated acreage (noted below by "-" sign) and irrigating previously unirrigated acreage (noted below by "+" sign) as follows:

<u>ID</u>	<u>Acres</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>
1	38.00	N2NW	5	27N	13E
2	12.00	N2NWNE	5	27N	13E
3	21.00	N2NE	6	27N	13E
4	160.00	SE	25	28N	13E
5	160.00 107.00 (-53 A)	SE	19	28N	13E
6	242.00 133.00 (-109 A)	W2	20	28N	13E
7	25.00	SWSE	20	28N	13E
8	5.00 (NEW +5 A)	S2S2SW	21	28N	13E
9	50.00 192.00 (+142 A)	N2	28	28N	13E
10	235.00	S2	28	28N	13E
11	489.00 504.00 (+15 A)		29	28N	13E
12	140.00	SW	30	28N	13E
13	225.00	E2	30	28N	13E
14	9.00	S2S2NW	30	28N	13E
15	328.00	E2	31	28N	13E
16	70.00	E2NW	31	28N	13E
17	137.00	SW	31	28N	13E
18	575.00		32	28N	13E
19	58.00	N2NW	33	28N	13E
20	17.00	SWNW	33	28N	13E
21	20.00	SENE	33	28N	13E
22	18.00	NWSW	33	28N	13E
23	30.00	NWNE	33	28N	13E
24	14.00	SWNE	33	28N	13E
25	13.00	NWSE	33	28N	13E

The acreage retired from irrigation totals 162 acres and the previously unirrigated acreage totals 162 acres, an acre for acre swap, for a total of 3,086 irrigated acres under both the existing claims and under the claims as proposed to be changed.

3. The Environmental Assessment (EA) prepared by the Department for this Change Application was reviewed and is included in the record of this proceeding. The EA concludes that there will be no significant impact on the environment if the change is approved. (Department File)
4. A public notice describing facts pertinent to this Change Application was published in the *Mountaineer*, a newspaper of general circulation, printed and published at Big Sandy, Montana, on August 30, 2006, and was mailed to persons listed in the Department file on August 21, 2006. (Department File)
5. The Applicant proposes to retire 162 acres, a 109 acre parcel (Parcel 1) in the NW1/4 of Sec. 20 and a 53 acre parcel (Parcel 2) in the N1/2SE1/4 of Sec. 19, of claimed historic flood irrigation located on the west side of Big Sandy Creek to the northwest of the proposed new place of use. The lands proposed to be retired lie

downstream of the proposed new place of use. (Application materials, Department File, Exhibit A-2)

Historical Use

6. The water rights requested to be changed are Statement of Claim Nos. 40H-W-161611 through 40H-W-161622 which are all supplemental to each other. All of these supplemental claims are for irrigation of the claimed 3,086 acres. These Statements of Claim include in their place of use 242 acres in the W1/2 Sec. 20, T28N, R13E (encompassing Parcel 1), and 160 acres in the SE1/4 Sec. 19, T28N, R13E (encompassing parcel 2). The Applicant's proposal to retire historically irrigated acres as described in Finding of Fact 5, above, is consistent with the claimed places of use. (Department File, Abstract of Claim Nos. 40H-W-161611 through 40H-W-161622)
7. The Water Resources Survey (1964) indicates that the N1/2 of the W1/2 of Sec. 20, T28N, R13E (the area containing Parcel 1) was not irrigated but irrigation did occur up to the southern edge of the NW1/4 Section 20. The Water Resources Survey also indicates that Section 19 (the area containing Parcel 2) was not irrigated, but that there are irrigation ditches or laterals running through the Section. (Department File)
8. The Eighth Judicial District Court for the County of Chouteau found, in 1974, that “. . . IX Ranch Company possesses in excess of 4,400 acres of land, all of which are suitable for the growing of alfalfa . . . and all of which are susceptible of irrigation from the ditches hereinbefore described and *which have been, at various times, when water was available from Big Sandy Creek, irrigated by said IX Ranch Company* and its predecessors in interest.” *John M. Sheehy v. IX Ranch Company, et. al.*, Cause No. 14095, Eighth Judicial District Court for the County of Chouteau, January 31, 1974. The 4,400 acres of land referred to by the District Court include the W1/2 and the S1/2SE1/4 Sec. 20, T28N, R13E and the SE1/4 Sec. 19, T28N, R13E – lands which include the Applicant's Parcel 1 and Parcel 2 proposed to be retired. (Department File, Exhibit A-16)
9. Steve Roth has worked on the IX Ranch since 1955. (Testimony of Steve Roth)
10. Applicant's Parcel 1 and Parcel 2 have been irrigated since at least 1955 via a series of ditches running north into Sections 19 and 20 and both Parcels were recently flood irrigated by these ditch systems under Water Rights Claims 40H-W-

- 161611 through 40H-W-161622. (Testimony of Steve Roth, Exhibits A6-A through A6-I, Exhibits A8-A through A8-C)
11. The testimony is clear that these twelve Water Rights Claims were historically co-mingled and used on a rotational basis upon the 3,086 acres of claimed historic use. (Testimony of Steve Roth, Exhibits A6-A through A6-I, Exhibits A8-A through A8-C, Exhibit A-2, Exhibits A-9, A-10, Testimony of Karl Uhlig)
 12. In normal water years the flow of Big Sandy Creek does not amount to the 75.33 cfs (3,013 miners inches) claimed in Statement of Claim Nos. 40H-W-161611 through 40H-W-161622 or as described in the Cause No. 14095 of the Eighth Judicial District Court Decree *supra*. As the senior appropriator on Big Sandy Creek, IX Ranch has historically taken all of the water available in Big Sandy Creek for irrigation during the period of use described in the Statements of Claim. During the time that a particular field of the 3,086 acres was being hayed, the water would be used on other fields. (Exhibits A-11, A-16, Testimony of Steve Roth)
 13. The topography of the land surface in the area indicates that direct flood irrigation of both Parcels 1 and 2, is possible from the IX ditch system. The record does not disclose any man-made obstructions which would prevent direct flood irrigation. The record indicates that ditches extend into both Parcels 1 and 2, and that culverts for the ditches are in place along the roads to allow flood irrigation to occur on both parcels. (Department File, Exhibits A6-A through A6-I, Exhibits A8-A through A8-C, Testimony of Steve Roth)
 14. The lands irrigated by IX Ranch have been served by these twelve Statements of Claim to the extent that the flows in Big Sandy Creek have allowed them to be. (Department File, Exhibits A-11, A-16, Testimony of Steve Roth, Testimony of Karl Uhlig)

Adverse Effect

15. Applicant proposes to operate an irrigation pivot which will irrigate 285 acres. Of this 285 acres, 162 acres has not been previously irrigated and 123 acres is currently irrigated by flood irrigation. The pivot pump site will be located along the existing ditch system which has a point of diversion in Sec. 3, T27N, R13E and irrigates lands to the east of the channel of Big Sandy Creek (Alfalfa Ditch). The point of diversion will not change. (Exhibits A-2, A-4, Department File, Testimony of Karl Uhlig)

16. To compensate for the 162 acres of previously unirrigated acreage, the Applicant will retire 162 acres of land previously irrigated by flood irrigation via the Dibbin Ditch system which provides irrigation water to lands to the west of Big Sandy Creek. The point of diversion for the Dibben Ditch is located in Sec. 34, T28N, R13E immediately downstream of the Alfalfa Ditch diversion on Big Sandy Creek. (Exhibit A-1, A-4, Testimony of Karl Uhlig)
17. Crop data used in the application was for alfalfa as that has the highest water requirements of any historic or anticipated future crop grown on the IX Ranch irrigated lands. Using Montana Irrigation Guide figures, during a dry year, 162 acres of alfalfa require 516 acre-feet of water under flood irrigation at a field efficiency of 55% and 162 acres of alfalfa under sprinkler irrigation would require 288 acre-feet of water at 75% efficiency. The net effect of this change to the total *number of acres* irrigated will be zero. Under existing conditions there are 162 acres of alfalfa being irrigated by flood irrigation and if the change is approved there will be 162 acres of alfalfa being irrigated by sprinkler. (Department File)
18. The flows in Big Sandy Creek will not be adversely affected by retiring the 162 acres serviced by the Dibben Ditch and adding 162 previously non-irrigated lands serviced by the Alfalfa Ditch. There are no other points of diversion between the Alfalfa Ditch and the Dibben Ditch. (Department File, Testimony of Karl Uhlig)
19. IX Ranch is the senior water appropriator on Big Sandy Creek and takes all of the available water in Big Sandy Creek under their existing claims during the irrigation season except during times of high spring runoff or during periods when they are haying. (Testimony of Steve Roth, Testimony of Karl Uhlig, Exhibits A-11, A-16, Department File)
20. There are no other appropriators on Big Sandy Creek between the Alfalfa and Dibben Ditch diversions and the area downstream in the vicinity of Parcels 1 and 2. (Testimony of Karl Uhlig)
21. The crops to be irrigated under the pivot will be alfalfa. The crops in Parcels 1 and 2 to be retired are alfalfa. There will be no greater crop consumptive use of water as a result of this change. (Department File, Testimony of Karl Uhlig)

Adequacy of Appropriation Works

22. The points of diversion and the ditch system to deliver water to the pump site currently exist and are currently used to deliver water to fields in the vicinity of the

- pivot. No alteration of the ditches are necessary. (Department File, Testimony of Karl Uhlig)
23. The pumps and piping to operate the pivot are adequate and can be controlled to deliver appropriate amounts of water to the pivot field. (Department File, Testimony of Karl Uhlig)

Beneficial Use

24. The beneficial use under this change is for irrigation. The Applicant has existing water rights for irrigation and there is no change in beneficial use as a result of this Change Application. (Department File)
25. Under existing operations at IX Ranch there are 109 acres of flood irrigation within Parcel 1, 53 acres of flood irrigation in Parcel 2, and 123 acres of flood irrigation within the circle of the proposed pivot for a total of 285 acres of flood irrigation. Using the Montana Irrigation Guide, the applicant estimates that the total acre feet per year for 285 acres of alfalfa under flood irrigation ranges between 630 to 693 acre feet.
26. Under the proposed change, instead of having 285 acres under flood irrigation, 285 acres would be under sprinkler irrigation (123 acres converted from flood to sprinkler, 162 acres retired from flood irrigation and 162 acres of new ground under sprinkler). Again using the Montana Irrigation Guide, the applicant estimates that between 461 to 507 acre feet per year would be required to grow the same acreage of alfalfa.

Possessory Interest

27. The Applicant has affirmed that it has the possessory interest, or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use. (Department File)

Water Quality Issues

28. No valid objections relative to water quality were filed against this Change Application. The water quality of a prior appropriator will not be adversely affected by this proposed change. (Department File)

Based on the foregoing Findings of Fact and upon the record in this matter, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

General

1. The Department has jurisdiction to approve a change in appropriation right if the appropriator proves the criteria in Mont. Code Ann. § 85-2-402.
2. The Department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence the proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued; except for a lease authorization pursuant to Mont. Code Ann. § 85-2-436, a temporary change authorization for instream use to benefit the fishery resource pursuant to Mont. Code Ann. § 85-2-408, or water use pursuant to Mont. Code Ann. § 85-2-439 when authorization does not require appropriation works, the proposed means of diversion, construction and operation of the appropriation works are adequate; the proposed use of water is a beneficial use; except for a lease authorization pursuant to Mont. Code Ann. § 85-2-436 or a temporary change authorization pursuant to Mont. Code Ann. § 85-2-408 or Mont. Code Ann. § 85-2-439 for instream flow to benefit the fishery resource, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use; if the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant; and, if raised in a valid objection, the water quality of a prior appropriator will not be adversely affected; and the ability of a discharge permitholder to satisfy effluent limitations of a permit will not be adversely affected. Mont. Code Ann. §§ 85-2-402(2)(a) through (g).
3. A public notice containing the facts pertinent to the change application must be published once in a newspaper of general circulation in the area of the source and mailed to certain individuals and entities. This requirement has been met Mont. Code Ann. § 85-2-307. See Finding of Fact No. 2.

Historic Use

4. The lands proposed to be retired (Parcel 1 and Parcel 2) under water right Statement of Claim Nos. 40H-W-161611 through 40H-W-161622 have historically been irrigated

by IX Ranch. Although the Water Resources Survey (1964) does not specifically show all of the lands in Parcels 1 and 2 to be irrigated the preponderance of the evidence in the record is sufficient to find that the lands in question have been historically irrigated. IX Ranch diverts, at times, all of the waters of Big Sandy Creek and applies them as needed to their irrigated lands, including the lands comprising Parcels 1 and 2. The record is clear that IX Ranch has used all of the available water of Big Sandy Creek and will continue to do so under this Change Application to irrigate their 3,086 acres. See Findings of Fact Nos. 6, 7, 8, 9, 10, 11, 12, 13.

Adverse Affect

5. The Applicant has proven by a preponderance of the evidence that the water rights of other appropriators under existing water rights, certificates, permits, or state reservations will not be adversely affected. The amount of water diverted from Big Sandy Creek will not increase as a result of this change. This Change Application is entirely internal to the IX Ranch operations as it only involves an acre for acre swap in the place of use after it has been diverted from Big Sandy Creek by the existing ditch systems. See Findings of Fact Nos. 14, 15, 16, 17, 18, 19.

Adequacy of Appropriation Works

6. The Applicant has proven by a preponderance of the evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate. The diversion structures and ditches are currently in place and being used. See Finding of Fact Nos. 20, 21.

Beneficial Use

7. The Applicant has proven by a preponderance of the evidence that the use of water is a beneficial use and that the quantity of water requested is the amount necessary to sustain the proposed beneficial use. The quantity of water requested is within Montana Irrigation Guide standards and under the proposed change there should be an overall water savings. See Finding of Fact Nos. 22, 23, 24.

Possessory Interest

8. The Applicant has proven by a preponderance of the evidence a possessory interest in the property where the water is to be put to beneficial use. See Mont. Admin. R. 36.12.1802. Mont. Code Ann. § 85-2-402(2)(d). See Finding of Fact No. 27.

Water Quality Issues

9. The water quality of a prior appropriator will not be adversely affected. No valid objections relative to water quality were raised. Mont. Code Ann. §§ 85-2-402(2)(f), (g). See Finding of Fact No. 28.

WHEREFORE, base upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner makes the following:

FINAL ORDER

Authorization to Change a Water Right No. 40H-30017203 is hereby **GRANTED** to IX Ranch Co. The place of use for Statement of Claim Nos. 40H-161611 through 40H-161622 shall be modified as follows:

<u>ID</u>	<u>Acres</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>
1	38.00	N2NW	5	27N	13E
2	12.00	N2NWNE	5	27N	13E
3	21.00	N2NE	6	27N	13E
4	160.00	SE	25	28N	13E
5	160.00 107.00 (-53 A)	SE	19	28N	13E
6	242.00 133.00 (-109 A)	W2	20	28N	13E
7	25.00	SWSE	20	28N	13E
8	5.00 (NEW +5 A)	S2S2SW	21	28N	13E
9	50.00 192.00 (+142 A)	N2	28	28N	13E
10	235.00	S2	28	28N	13E
11	489.00 504.00 (+15 A)		29	28N	13E
12	140.00	SW	30	28N	13E
13	225.00	E2	30	28N	13E
14	9.00	S2S2NW	30	28N	13E
15	328.00	E2	31	28N	13E
16	70.00	E2NW	31	28N	13E
17	137.00	SW	31	28N	13E
18	575.00		32	28N	13E
19	58.00	N2NW	33	28N	13E
20	17.00	SWNW	33	28N	13E
21	20.00	SENE	33	28N	13E
22	18.00	NWSW	33	28N	13E
23	30.00	NWNE	33	28N	13E
24	14.00	SWNE	33	28N	13E
25	13.00	NWSE	33	28N	13E

All other information for these Statement of Claims shall remain the same.

The following statement is specifically made a part of this ORDER and shall be included in the remarks portion of the abstract of record for each Statement of Claim Nos. 40H-161611 through 40H-161622:

The granting of Change Application No. 40H-30017203 in no way affirms or is determinative of the actual historic use of the full extent of these claims or claims supplemental thereto. The historic use of water examined under Change Application No. 40H-30017203 was limited to possible expansion of historic use of water on the specific 162 acres of the 3,086 acres identified in these claims for change under the unique facts of this case.

NOTICE

A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under the Montana Administrative Procedure Act (Title 2, Chapter 4, Mont. Code Ann.). A petition for judicial review under this chapter must be filed in the appropriate district court within 30 days after service of the final order. (Mont. Code Ann. § 2-4-702)

If a petition for judicial review is filed and a party to the proceeding elects to have a written transcript prepared as part of the record of the administrative hearing for certification to the reviewing district court, the requesting party must make arrangements for preparation of the written transcript. If no request for a written transcript is made, the Department will transmit only a copy of the audio recording of the oral proceedings to the district court.

Dated this 7th day of February, 2008.

/Original signed by David A Vogler/

David A. Vogler
Hearing Examiner
Department of Natural Resources
and Conservation
Water Resources Division
P.O. Box 201601
Helena, Montana 59620-1601

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the FINAL ORDER was served upon all parties listed below on this 7th day of February, 2008 by first class United States mail.

JOHN E BLOOMQUIST
ABIGAIL J. ST. LAWRENCE
DONEY CROWLEY BLOOMQUIST ET AL
PO BOX 1185
HELENA MT 59624-1185

KARL UHLIG PBS&J – CONSULTANT
1120 CEDAR STREET
MISSOULA MT 59802

LYLE OPHUS
PO BOX 406
BIG SANDY MT 59520

RANDY H RANDOLPH
RANDOLPH LAW FIRM
PO BOX 1138
HAVRE MT 59501

CC:
WATER RESOURCES REGIONAL OFFICE
PO BOX 1828
HAVRE MT 59501-1828

/Original signed by Jamie Price/
Jamie Price
Hearings Unit, 406-444-6615